(17,543.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 429.

FRED BARDES, TRUSTEE OF THE ESTATE OF FRANK T. WALKER, BANKRUPT, COMPLAINANT,

vs.

THE FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL.

ON A CERTIFICATE FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 24, 1899.

1 In United States District Court, Northern District of Iowa, Western Division.

FRED BARDES, Trustee of Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL. } In Equity.

Be it remembered that this case came up for hearing before the United States district court for the northern district of Iowa, western division, upon a bill of complaint in equity filed by Fred Bardes, trustee of the estate of Frank T. Walker, who had been adjudged to be a bankrupt upon his own petition, filed March 1, 1899, in this court, sitting in bankruptcy, in the western division of this district.

The defendants to the bill are The First National Bank of Hawarden, Iowa, a banking corporation created under the act of Congress commonly known as the national banking act, its place of business being at Hawarden, Sioux county, Iowa; also Frederick E. Watkins, J. A. Moody, A. Melrose, and L. K. Williams, citizens of the State of South Dakota, and Charles R. Allen, a citizen of Iowa, residing at Hawarden, and the general purpose of the bill is to secure a decree setting aside a transfer of a stock of goods by the bankrupt to the defendants, and to compel the defendants to account for the goods or their proceeds, on the ground that the transfer was in fraud of the provisions of the bankrupt act and in fraud of the creditors of the bankrupt, it being averred that the stock of goods so transferred by the bankrupt was of the value of thirty-five
2 hundred dollars.

To this bill the defendants interposed a demurrer on the ground that this court could not take jurisdiction of the case, it being a suit brought by the trustee against third parties, and as the bankrupt could not have sued the defendants in this court if the proceedings in bankruptcy had not been instituted, therefore the court cannot entertain jurisdiction of the action brought by the trustee, and the question of the jurisdiction of the court having been thus put in issue, and this court desiring to obtain the opinion and instruction of the Supreme Court of the United States for its guidance in the premises, hereby certifies to the Supreme Court for its consideration and determination the following questions:

1st. Do the provisions of the second clause of section 23 of the act of Congress, known as the bankrupt act of 1898, control and limit the jurisdiction of all courts, including the several district courts of the United States, over suits brought by trustees in bankruptcy to recover or collect debts due from third parties or to set aside transfers of property to third parties alleged to be fraudulent as against creditors, including payments in money or property to preferred creditors?

2nd. Can the district courts of the United States under any circumstances entertain jurisdiction over suits brought by trustees in

bankruptcy to set aside fraudulent transfers of money or property made by the bankrupt to third parties before the institution of the proceedings in bankruptcy?

3rd. Can this court, being the district court for the northern district of Iowa, take jurisdiction over the suit as it now stands on the record?

4th. If the complainant should dismiss the suit as to the defendants living in Iowa, thus making it a suit between citizens of
3 Iowa, on the one hand, and citizens of South Dakota, on the other, and involving over $2,000, exclusive of interests and costs, would jurisdiction exist in this court?

O. P. SHIRAS,
District Judge for Northern District of Iowa.

And it is further ordered that the transcript to be certified by the clerk of this court to the Supreme Court shall contain the bill of complaint, the demurrer filed thereto, and the foregoing certificate.

O. P. SHIRAS, *Judge.*

4 In the District Court of the United States in and for the Northern District of Iowa, Western Division.

In the Matter of the Estate of FRANK T. WALKER, Bankrupt.

FRED BARDES, Trustee, Complainant,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA; The Bank of Alcester, of Alcester, South Dakota, and Charles R. Allen, Defendants. } In Bankruptcy.

To the judges of the district court of the United States for the northern district of Iowa, western division, in equity:

Fred Bardes, trustee for the creditors of Frank T. Walker, bankrupt, of Sioux City, Iowa, a citizen of the State of Iowa and of the United States, brings this his bill into this court of bankruptcy against the First National Bank of Hawarden, Iowa, which is a corporation created and existing in due form of law under and by virtue of the acts of Congress relating to national banks; against the Bank of Alcester, of Alcester, South Dakota, a copartnership, whose principal place of business is at Alcester, South Dakota, and which copartnership is composed of Frederick E. Watkins, J. A. Moody, A. Melrose, and L. K. Williams, and against Charles R. Allen, a resident and citizen of Hawarden, Iowa.

And thereupon your orator complains and says that on the 14th day of January, 1899, the said Frank T. Walker was engaged, at Hawarden, Iowa, in the business of selling, at retail, clothing, hats, caps, boots, shoes, rubber goods, and other articles of mer-
5 chandise usually kept in a general clothing store, and that the said Frank T. Walker at said time was the owner of and possessed a similar stock of clothing and merchandise at Alcester, in the State of South Dakota.

And your orator further shows that at said time the said stock of clothing and merchandise possessed at Alcester, South Dakota, was of the reasonable value of thirty-five hundred dollars.

And your orator further shows that at said time and on the 16th day of January, 1899, the said Frank T. Walker was indebted to various persons for goods, wares, and merchandise previously sold and delivered to him in the sum of about twelve thousand dollars, and was indebted to the said First National Bank of Hawarden, Iowa, in the sum of about one thousand dollars for money previously borrowed from the said First national bank, and was indebted to the bank of Alcester, of Alcester, South Dakota, a copartnership composed of various persons, in the sum of about four hundred and fifty dollars, and that at said time and on the 16th day of January, 1899, the said Frank T. Walker was insolvent and unable to liquidate his indebtedness aforesaid.

And your orator further shows that on the 16th day of January, 1899, the said Frank T. Walker made a pretended sale of his said stock of clothing and merchandise owned and possessed by him at Alcester, South Dakota, to one Charles R. Allen for the sum of about seventeen hundred and sixty-four dollars, which amount was evidenced by a promissory note executed by the said Charles R. Allen to the said Frank T. Walker on the said date; which promissory note was without interest and matured on or about the first day of August, 1899.

6 And your orator further shows that on the said 16th day of January, 1899, and at the time of the said sale of said stock of clothing and merchandise by the said Frank T. Walker to the said Charles R. Allen, the said Frank T. Walker made a pretended sale and delivery of said promissory note, by endorsement thereon, to the said First National Bank of Hawarden, Iowa, for the sum of about sixteen hundred and twenty-nine and $\frac{85}{100}$ dollars, and that at said time the said First National Bank of Hawarden, Iowa, paid to the said Walker the sum of about one hundred and seventy-five dollars in cash for said promissory note and applied the balance of said note to the discharge of the indebtedness of said Walker to the said First National Bank of Hawarden, Iowa, and to the said Bank of Alcester, of Alcester, South Dakota.

And your orator further complains and shows upon information and belief that by the pretended sale of said stock of merchandise to the said Allen and the execution of said note to the said Walker, and the sale and delivery thereof to the said First National Bank of Hawarden, Iowa, the said Walker intended to give a preference to the said First National Bank of Hawarden, Iowa, and to the said Bank of Alcester, creditors of the said Walker, over and above the other credits of the said Walker, and the said Charles R. Allen, the said Bank of Alcester, and the said First National Bank of Hawarden, Iowa, at the time of the pretended sale and endorsement of said note and the payment of the sum thereon and the discharge of the said indebtedness due the said First National Bank of Hawarden, Iowa, and the said Bank of Alcester, South Dakota, had reasonable cause to

believe and did believe that said Walker was insolvent, and
7 that it was the intention thereby to give a preference to the said First National Bank of Hawarden, Iowa, and the said Bank of Alcester, South Dakota, over and above the other creditors of the said Walker, and participated in said intention to give a preference, as aforesaid, fully knowing said Walker was insolvent, in fraud of the acts of Congress of the United States relating to bankruptcy.

And your orator further shows that about the 27th day of January, 1899, and within four months after said preference, a petition was filed in this cause by Friend Brothers Clothing Company of Milwaukee, Wisconsin, and Straw & Ellsworth Manufacturing Company of Milwaukee, Wisconsin, both corporations organized and existing under the laws of the State of Wisconsin, and by Lehman Aarons, a sole trader, under the name and style of Lehman Aarons & Company, of Milwaukee, Wisconsin, praying that service of said petition, with subpœna, be made upon said Frank T. Walker, as provided in the acts of Congress relating to bankruptcy, and that said Walker be adjudged by the court to be a bankrupt within the purview of said acts.

And your orator further states that about the first day of March, 1899, the said Frank T. Walker was adjudged by the court to be a bankrupt, as in said petition prayed, and at the first meeting of the creditors of said bankrupt, held about the 27th day of March, 1899, and not more than thirty days after said adjudication, at Orange City, in the county of Sioux and State of Iowa, in which county the said bankrupt had his principal place of business and resided and had his domicile, your orator was by the creditors of said bankrupt
duly elected and appointed sole trustee of the estate of the said
8 bankrupt, and about the 3rd day of April, 1899, and within ten days after the said appointment, qualified as said trustee by entering into bond to the United States, with sureties approved by the court, conditioned for the faithful performance of his official duties as said trustee; and your orator further shows that said appointment is still in force and is unrevoked, and that he now is the duly elected, qualified, and acting sole trustee of the estate of the said bankrupt.

And your orator further charges and alleges upon his information that the said defendants, The First National Bank of Hawarden, Charles R. Allen, and The Bank of Alcester, at the time of receiving said note and said stock of merchandise at Alcester, S. D., had knowledge of the object and intent with which the same was given to them, and received the same in order to assist and enable the said bankrupt to carry out the fraudulent purpose aforesaid.

And your orator further alleges upon information and belief that at the time said note was given and the alleged sale of the stock of merchandise made to the defendants, as aforesaid, the said Walker was largely indebted on past-due claims and was acting in contemplation of insolvency, and that said transfers were made and received with intent to hinder, delay, impede, and defraud his creditors, and with a view to prevent said property from being applied

in the payment of his debts, and with the further intent to cover up his property so that his creditors should not be able to reach the same.

And your orator further shows upon information and belief that the said pretended sale of the said stock of clothing and merchandise in the village of Alcester and State of South Dakota, by
9 the said bankrupt to the said Charles R. Allen was in contemplation of bankruptcy and was fraudulent and void, and that the said Allen was not the real purchaser of said stock of clothing and merchandise, but that the said pretended purchase by the said Allen was for the use and benefit of the said First National Bank of Hawarden, Iowa, and the Bank of Alcester, of Alcester, South Dakota, and that the said First National Bank of Hawarden, Iowa, was the real purchaser of said stock of clothing and merchandise, and that the sale thereof to the First National Bank of Hawarden, Iowa, was for the purpose of creating a preference in favor of the said First National Bank of Hawarden, Iowa, and the Bank of Alcester, South Dakota, of the indebtedness of the said Walker to the said defendants, as aforesaid.

And your orator further alleges that Frederick E. Watkins is president of said First National Bank of Hawarden, Iowa, and is the managing partner of said copartnership known as the Bank of Alcester, of Alcester, South Dakota, and was such officer and such managing partner during the times and in all the transactions referred to herein.

And your orator further shows and alleges that by the provisions of the act of Congress approved July 1, 1898, to establish a uniform system of bankruptcy, your orator became, by operation of law, entitled as such trustee to the possession of all the property of the said Frank T. Walker, bankrupt, and to all property conveyed by him to said First National Bank and Charles R. Allen, defendants, in fraud of his creditors, as aforesaid, and entitled to sue for and recover the same as assets of said bankrupt; and forasmuch as your orator can have no adequate relief except in this court, sitting as a court of bankruptcy, and to the end, therefore,
10 that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make (but not under oath, the same being expressly waived) to the premises, and to all the separate matters hereinbefore stated and charged, as full and particularly as if the same were repeated and interrogated as to each of said matters, and that the said note and the conveyance of said stock of merchandise be declared fraudulent and void, and that the same may be decreed to be invalid against the complainant as trustee aforesaid, and that the same may be set aside, and that the said defendants and each of them may be compelled to account for the said property and the profits thereof so fraudulently conveyed, as aforesaid, and any moneys received by virtue of said conveyances or note, and that the said defendants, their agents and servants, be restrained

and enjoined from disposing of or in anywise transferring said property, or of any money received thereunder, and from mixing and commingling said property with their own, under penalties to be pronounced by the court, and that your orator may recover the costs of this proceeding and have such other and further relief as may seem just and proper, may it please your honor- to grant unto your orator the writ of subpœna, issued out of and under the seal of this court, directed to said defendants and each of them, commanding them, on a day certain therein to be named and under a certain penalty, to appear in this honorable court, then and there to answer all and singular the premises, and to stand and
11 perform and abide such further order, direction, and decree as may be made against them or either of them.

And your orator will ever pray.

FRED BARDES,
Trustee, Complainant.
LOHR, GARDINER & LOHR,
Solicitors for Complainant.

H. C. GARDINER, *Of Counsel.*

STATE OF IOWA, }
Woodbury County, } *ss:*

On this 27th day of April, 1899, before me personally appeared Fred Bardes and made oath that he has read the foregoing bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be based upon information and belief, and that as to those matters he believes them to be true.

FRED BARDES.

Subscribed and sworn to before me this 27th day of April, 1899.

F. W. LOHR,
[SEAL.] *Notary Public in and for Woodbury County, Iowa.*

Filed April 28, 1899.

A. J. VANDUZEE, *Clerk,*
By J. H. BOLTON, *Deputy.*

12 In the District Court of the United States in and for the Northern District of Iowa, Western Division.

In the Matter of the Estate of FRANK T. WALKER, Bankrupt.

FRED BARDES, Trustee, Complainant,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA; The Bank of Alcester, of Alcester, South Dakota, and Charles R. Allen, Defendants. } In Bankruptcy.

Demurrer of the Above-named Defendants to the Bill of the Above-named Complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and for- as the same are therein set forth and alleged, doth demur to said bill, and for causes of demurrer showeth:

1st. That it doth appear by the complainant's own showing by said bill that he is not entitled to the relief demanded in said bill against these defendants.

2nd. It appears from said bill that this court is without jurisdiction for the reason that the controversy is between citizens of the same State.

Wherefore, and for divers other good causes of demurrer appearing on said bill, defendants doth demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make answer to said bill, and they humbly pray to
13 be hence dismissed with their reasonable costs therein sustained.

WM. MILCHRIST,
Solicitor & of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in the point of law.

WM. MILCHRIST,
Of Counsel for Defendants.

STATE OF IOWA, *Woodbury County,* } *ss:*

William Milchrist, being duly sworn, deposes and says: I am the attorney for the above-named defendants. The foregoing demurrer is not interposed for delay.

WM. MILCHRIST.

Subscribed in my presence and sworn to before me by the said William Milchrist this 10th day of June, A. D. 1899.

CORA G. WHEELOCK,
[SEAL.] *Notary Public in & for Woodbury County, State of Iowa.*

Filed June 12th, 1899.

A. J. VANDUZEE, *Clerk.*

14 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Vanduzee, clerk of the United States district court in and for the northern district of Iowa, do hereby certify that the foregoing transcript contains the full, true, and complete copies of the bill of complaint and the demurrer in the case of Fred Bardes, trustee of estate of Frank T. Walker, bankrupt, against First National Bank of Hawarden, Iowa, *et al.*, as full, true, and complete as the original of the same now remains on file and of record in my office, and that attached hereto is the original certificate of O. P. Shiras, judge of the district court of United States in and for said district, certifying to the Supreme Court of the United States for its consideration certain questions arising in said suit.

In witness whereof I hereunto subscribe my name and affix the seal of said U. S. district court, at my office, in Dubuque, in said northern district of Iowa, this 14th day of October, A. D. 1899.

[Seal District Court U. S., Northern District of Iowa.]

A. J. VAN DUZEE,
Clerk U. S. District Court, Northern District of Iowa.

Transcript, 46 fo.....	4.60
Certificate & seal.....	35
	$4.95

Endorsed on cover: File No., 17,543. N. Iowa D. C. U. S. Term No., 429. Fred Bardes, trustee of the estate of Frank T. Walker, bankrupt, complainant, *vs.* The First National Bank of Hawarden, Iowa, *et al.* Filed October 21, 1899.